

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARGARET M. FLAHERTY, : 4:CV-06-0235

Plaintiff : (Judge McClure)

v. : (Magistrate Judge Smyser)

JOANNE B. BARNHART, :
Commissioner of Social Security, :
:

Defendant

FILED
WILLIAMSPORT, PA

O R D E R
September 21, 2006

SEP 21 2006

JOANNE B. BARNHART, CLERK
SEP 21 2006
H.P. DEPUTY CLERK

BACKGROUND:

Plaintiff has brought this action under the authority of 42 U.S.C. § 405(g) to obtain judicial review of the decision of the Commissioner of Social Security denying her claim for disability insurance benefits.

This case was initially referred to United States Magistrate Judge J. Andrew Smyser.

On September 1, 2006, Magistrate Judge Smyser filed his 21-page report and recommendation, in which he concluded with the recommendation that the appeal of the plaintiff be granted, and that the case be remanded to the Commissioner with instructions to further consider treating physicians' reports and opinions and to consider the plaintiff's residual functional capacity to be that

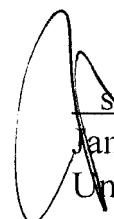
found in 2003 unless evidence of a basis for a material distinction of the earlier finding is found to exist.

On September 20, 2006, the Commissioner of Social Security, by the United States Attorney, advised the court that the Commissioner waives the opportunity to object to the foregoing report and recommendation.

The court accepts the recommendation of the magistrate judge.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of United States Magistrate Judge J. Andrew Smyser (record document no. 14-1, filed September 1, 2006) is approved and adopted by the court for the reasons set forth therein.
2. The appeal of the plaintiff is granted, and the case is remanded to the Commissioner with instructions to further consider treating physicians' reports and opinions and to consider the plaintiff's residual functional capacity to be that found in 2003 unless evidence of a basis for a material distinction of the earlier finding is found to exist.
3. The clerk is directed to close the case file.



James F. McClure, Jr.
James F. McClure, Jr.
United States District Judge